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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,160	03/30/2001	Matthew Bondy	33477US1	6295

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EXAMINER

GART, MATTHEW S

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,160

Applicant(s)

BONDY, MATTHEW

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-10,14,15 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) 28-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-10,14,15 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1, 3, 6-10 and 14-15 were amended, claims 2, 5, 11, 12, 13 and 16-23 were cancelled, and claims 24-39 were added via the applicants amendment filed 7/19/2004. Claims 28-33 were withdrawn from consideration. Claims 1, 3-4, 6-10, 14-15, and 24-27 are pending in the instant application.

Election/Restrictions

Newly submitted claims 28-33 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 28 recites a sign-up module for enrolling an affinity group. The search required for Claims 28-33 are not required for claims 1, 3-4, 6-10, 14-15, and 24-27. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-33 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

Claim1 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Drawings

The drawings were received on 7/19/2004. The Examiner accepts these drawings.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6-9 and 24 is rejected under 35 U.S.C. 102(e) as being anticipated by Cronin U.S. Patent Application Publication 2001/0032145.

Referring to claim 6. Cronin discloses a method according to claim 24 as indicated below. Cronin further discloses a method wherein said Internet service comprises assisting a group in establishing a Web site (Cronin: paragraph 0034).

The Examiner notes, data identifying the type of group (i.e. Affinity) is only found in the nonfunctional data stored via the system. Data identifying a group is not functionally related to the substrate of the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in term of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Referring to claim 7. Cronin discloses a method according to claim 6 as indicated supra. Cronin further discloses a method comprising a step of preparing and maintaining a plurality of Web site frameworks, each of which serves as a basic architecture in creating said Web site (Cronin: paragraph 0034).

Referring to claim 8. Cronin discloses a method according to claim 7 as indicated supra. Cronin further discloses a method wherein said framework is designed to include a hyperlink to an e-tailing system (Cronin: paragraph 0034).

Referring to claim 9. Cronin discloses a method according to claim 7 as indicated supra. Cronin further discloses a method wherein said Web site framework is configured to guide and help said group to create said Web site. (Cronin: paragraph 0034).

The Examiner notes, data identifying the type of group (i.e. Affinity) is only found in the nonfunctional data stored via the system. Data identifying a group is not functionally related to the substrate of the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in term of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Referring to claim 24. Cronin discloses a method of providing an Internet service, the method comprising the steps of:

- Receiving instructions for generating a Web site (Cronin: paragraph 0034); and
- Assembling the Web site based upon the instructions (Cronin: paragraph 0034).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-4, 10, 14-15, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos U.S. Patent No. 6,029,141 in view of Cronin U.S. Patent Application Publication 2001/0032145.

Referring to claim 1. Bezos discloses a method of promoting and selling items comprising the steps of:

- Providing an e-tailing system for displaying information relating to items available for purchase, and for receiving and processing orders to purchase such items (Bezoz: abstract: "Following, registration, the associate sets up a Web site to distribute hypertextual catalog documents that include marketing information about selected products of the merchant.");
- Providing a hyperlink from a web site to the e-tailing system (Bezoz: abstract: "In association with each such product, the catalog document includes a hypertextual 'referral link' that allows a user to link to the merchant's site and purchase the product.");
- At the e-tailing system, receiving a plurality of orders to purchase items, the plurality associated with said web site and using the hyperlink to access the e-tailing system from said web site (Bezoz: Figure 10a: "Best of all is that because

of our association with Amazon Books we can get any book you want, at any time of day or night...");

- Processing the plurality of orders at the e-tailing system and identifying a corresponding plurality of items purchased (Bezos: Figure 10c); and
- Shipping the plurality of items purchased to a geographical location associated with the plurality of purchasers (Bezos: column 6, lines 12-20).

Bezos does not expressly disclose receiving instructions for generating a Web site and assembling the Web site based upon the instructions. Cronin discloses a method comprising the steps of receiving instructions for generating a Web site and assembling the Web site based upon the instructions (Cronin: paragraph 0034).

At the time the invention was made it would have been obvious to modify the system of Bezos to have included the limitations as taught by Cronin in order to allow individual distributors, partners or members of a multi-level, or multi-level-like company to operate a web-based business that takes advantage of the infrastructure, product offerings, and other resources of large multi-level parent company, while maintaining the characteristics and strength of the individual distributor, partner or member (Cronin: paragraph 0012).

Referring to claim 3. Bezos further discloses a method comprising steps of:

- Packaging said goods into a member package (column 6, lines 12-20 and column 16, lines 28-42);
- Packaging said member package into a group package (column 6, lines 12-20 and column 16, lines 28-42);

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- Delivering said group package to said geographical location (column 6, lines 12-20 and column 16, lines 28-42).

Referring to claim 4. Bezos discloses a method wherein said group package is delivered in a predetermined interval or period (Figure 8, "This item usually ships within 24 hours.").

Referring to claim 10. Bezos further discloses a method wherein said hyperlink is embedded in said Web site as to reference an electronic store, wherein said electronic store includes a customized electronic store of said group (Figure 6).

The Examiner notes, data identifying the type of group (i.e. Affinity) is only found in the nonfunctional data stored via the system. Data identifying a group is not functionally related to the substrate of the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in term of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Referring to claim 14. Bezos further discloses a method comprising a step of posting on said Web site an advertisement and information relating to said e-tailing system (Figure 8)

Referring to claim 15. Bezos further discloses a method comprising a step of enrolling said group as a membership or partnership (abstract).

The Examiner notes, data identifying the type of group (i.e. Affinity) is only found in the nonfunctional data stored via the system. Data identifying a group is not functionally related to the substrate of the system. Thus, this descriptive material will

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not distinguish the claimed invention from the prior art in term of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Referring to claim 25. Bezos further discloses a method comprising a step of offering for sale in the e-tailing system products and service of a group. The Examiner notes, data identifying the type of group (i.e. Affinity) is only found in the nonfunctional dated stored via the system. Data identifying a group is not functionally related to the substrate of the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in term of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Referring to claims 26-27. Claims 26-27 are rejected under the same rationale as set forth above.

Response to Arguments

Applicant's arguments filed 7/19/2004 have been fully considered but are moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew s Gart whose telephone number is 703-305-5355. The examiner can normally be reached on 8:30AM to 5:00PM m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

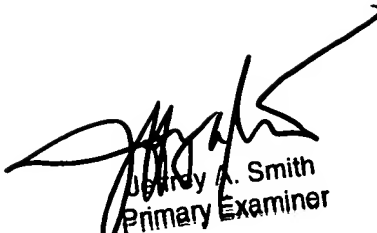
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August 11, 2004



Jeffrey A. Smith
Primary Examiner